

(ii) Shall not facilitate, require, permit, or consider participation if such action occurs.

§ 1040.35 Housing.

(a) *General.* A recipient shall not, on the basis of sex, apply different rules or regulations, impose different fees or requirements, or offer different services or benefits related to housing, except as provided in this section (including housing provided only to married students).

(b) *Housing provided by recipient.* (1) A recipient may provide separate housing on the basis of sex.

(2) Housing provided by a recipient to students of one sex, when compared to that provided to students of the other sex, shall be as a whole:

(i) Proportionate in quantity to the number of students of that sex applying for such housing; and

(ii) Comparable in quality and cost to the student.

(c) *Other housing.* (1) A recipient shall not, on the basis of sex, administer different policies or practices concerning occupancy by its students of housing other than provided by the recipient.

(2) A recipient which, through solicitation, listing, approval of housing, or otherwise, assists any agency, organization, or person in making housing available to any of its students, shall take reasonable action as may be necessary to assure itself that housing as is provided to students of one sex, when compared to that provided to students of the other sex, is as a whole:

(i) Proportionate in quantity; and

(ii) Comparable in quality and cost to the student. A recipient may render this assistance to any agency, organization, or person which provides all or part of such housing to students only of one sex.

§ 1040.36 Comparable facilities.

A recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but the facilities provided for students of one sex are to be comparable to the facilities provided for students of the other sex.

§ 1040.37 Access to course offerings.

A recipient shall not provide any course or otherwise carry out any of its

education program or activity separately on the basis of sex, or require or refuse participation by any of its students on that basis, including health, physical education, industrial, business, vocational, technical, home economics, music, and adult education courses.

(a) With respect to classes and activities in physical education at the elementary school level, the recipient shall comply fully with this section as expeditiously as possible but in no event later than one year from the effective date of this regulation.

(b) This section does not prohibit grouping of students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex.

(c) This section does not prohibit separation of students by sex within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball, and other sports, the purpose or major activity of which involves bodily contact.

(d) Where use of a single standard of measuring skill or progress in a physical education class has an adverse effect on members of one sex, the recipient shall use appropriate standards which do not have that effect.

(e) Portions of classes in elementary and secondary schools which deal exclusively with human sexuality may be conducted in separate sessions for boys and girls.

(f) Recipients may make requirements based on vocal range or quality which may result in a chorus or choruses of one or predominantly one sex.

§ 1040.38 Access to schools operated by LEAs.

A recipient which is a local educational agency shall not, on the basis of sex, exclude any person from admission to:

(a) Any institution of vocational education operated by the recipient; or

(b) Any other school or educational unit operated by the recipient, unless the recipient otherwise makes available to a person, under the same policies and criteria of admission, courses, services, and facilities comparable to